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532-358—74——1

[illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1973

No.

UNITED STATES OF AMERICA, PETITIONER

v.

ITT CONTINENTAL BAKING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review that portion of the judgment of the Court of Appeals for the Tenth Circuit which held that respondent's acquisitions in violation of a Federal Trade Commission order are "single" violations of the order under the civil penalty provisions of the Clayton and Federal Trade Commission Acts (15 U.S.C. 21(*l*) and 45(*l*)), rather than "continuing" violations for each day respondent continues to hold the unlawfully acquired assets.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra,* pp. 1A–10A) is reported at 485 F. 2d 16. The district court's findings of fact and conclusions of law (App.

C, *infra,* pp. 12A–16A; 1972 CCH Trade Cases, ¶73,993) are not officially reported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra,* p. 11A) was entered on September 24, 1973. On December 17, 1973, Mr. Justice White extended the time within which to file a petition for a writ of certiorari to and including January 22, 1974. On January 14, 1974, Mr. Justice White further extended the time within which to petition to and including February 21, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a firm which violates a Federal Trade Commission consent order prohibiting acquisitions is subject, under the civil penalty provisions of the Clayton and Federal Trade Commission Acts (15 U.S.C. 21(*l*), 45(*l*)), to the imposition of daily penalties for each day it continues to hold the unlawfully acquired assets.

STATUTES INVOLVED

Section 11(*l*) of the Clayton Act (38 Stat. 734, as amended, 15 U.S.C. 21(*l*)) provides:

> Any person who violates any order issued by the commission or board under subsection (b) of this section after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be

recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission or board each day of continuance of such failure or neglect shall be deemed a separate offense.

Section 5(*l*) of the Federal Trade Commission Act (38 Stat. 719, as amended, 15 U.S.C. 45(*l*)) provides:[1]

> Any person, partnership, or corporation who violates an order of the Commission [to cease and desist] after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission, each day of continuance of such failure to obey or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropri-

[1] Subsequent to the decision below, Congress amended Section 5(*l*) of the Federal Trade Commission Act by increasing the amount of the maximum civil penalty for each violation of a Commission order from $5,000 to $10,000, and by expressly empowering district courts to grant equitable relief in civil penalty cases. P.L. 93-153, Section 408(c), 87 Stat. 591.

ate in the enforcement of such final orders of the Commission.

STATEMENT

1. THE FTC PROCEEDINGS AND CONSENT ORDER

In 1960 the Federal Trade Commission issued an administrative complaint (App. 57a–67a)[2] charging, *inter alia,* that acquisitions of several baking companies by Continental Baking Company ("Continental") violated Section 7 of the Clayton Act (38 Stat. 731, as amended, 15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (38 Stat. 719, as amended, 15 U.S.C. 45). The complaint alleged that the aquisitions "substantially lessened actual and potential competition throughout the country in the manufacture, sale and distribution of bread;" "eliminated [the acquired firms] as independent competitive factors in the manufacture, sale and distribution of bread;" and "significantly increased the trend to industry-wide concentration of the manufacture and sale of bread" (App. 63a).

Two years later, while the proceeding was still before an examiner, Continental and FTC complaint counsel agreed (App. 68a–78a) to a proposed consent order. This proposal, which the Commission subsequently adopted without change, prohibited Continental for 10 years "from acquiring, directly or indirectly, * * * the whole or any part of the stock, share capital, or assets of any concern * * * engaged * * *

[2] "App." refers to the appendix filed in the court of appeals, a copy of which is being lodged with this Court.

in the production and sale of bread" without the Commission's prior approval.[3]

The order also required Continental to divest itself of one of the baking firms it had acquired. Continental complied with that provision, and it is not involved in this case.

In an appendix incorporated into their agreement the parties stated that "[o]ne of the principal problems in the baking industry is the tendency towards concentration and the continuous growth of major baking companies through acquisition. Such acquisitional growth and tendency towards concentration places in the hands of a few large companies the means to set the pattern of competition, not only among themselves, but also for all local baking companies serving any given area" (App. 78a). If the proposed order were adopted, the parties said, Continental's "alleged continuous practice of acquiring companies baking and selling bread * * * will be brought to a halt * * *" (*ibid.*). It was also agreed

[3] The section of the order barring acquisitions provides in full (App. 83a):

"IT IS FURTHER ORDERED that for a period of ten (10) years from the date of issuance of this order by the Federal Trade Commission respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls unless the Commission, on petition for modification of this Section III of this order, permits such an acquisition by respondent, said modification to be within the sole and final discretion of the Federal Trade Commission."

that the "complaint may be used in construing the terms of the order" (App. 69a).

As recommended by the hearing examiner (App. 79a–84a), the Commission, in May 1962, approved the agreement and adopted the consent order (App. 22a–23a).

2. THE COURT PROCEEDINGS

After the cease and desist order became final, Continental, without obtaining the Commission's prior approval, entered into agreements with three independent producers and sellers of bread by which Continental acquired their market share or sales volume. In December 1968, pursuant to the Commission's recommendation, the United States brought this proceeding under Section 11(*l*) of the Clayton Act and Section 5(*l*) of the Federal Trade Commission Act, alleging that Continental's agreements with the three local bakeries violated the order's ban on acquisitions.[4] The complaint (App. 5a–12a) sought civil penalties of $1,000 per day from the date of each acquisition to the date the complaint was filed, an injunction commanding future compliance with the order, and such further relief as the court deemed appropriate (the government later specifically requested divestiture (App. 135a)).

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[4] In September 1968, shortly before the complaint was filed, Continental merged with International Telephone and Telegraph Corporation ("ITT"). Pursuant to the merger agreement Continental ceased to exist, and its business has since been conducted by ITT Continental, a wholly-owned subsidiary of ITT, created for that purpose (App. 23a–25a). The suit was therefore brought against ITT Continental Baking Company ("ITT Continental").

The case was submitted to the district court upon the parties' stipulation of facts (App. 19a–56a). The court held that Continental's transactions with two of the three firms constituted acquisitions prohibited by the order, but that its transactions with the third firm did not (App. C, *infra,* pp. 14a–15a).

The district court denied the government's prayer for assessment of daily penalties. It concluded "that the terms of the consent order proscribe only the act of acquisition and that the violations of the consent order * * * did not constitute a 'continuing failure or neglect to obey' said order [within the meaning of the civil penalty statutes]. * * * Once these two acquisitions were accomplished, the violations were complete" (App. C, *infra,* p. 15a).[5]

[5] Other issues presented to the district court were whether the Commission is required to notify a person subject to an order that it is in violation of the order before continuing penalties may be imposed; whether the district court had the power to grant injunctive relief in a civil penalty proceeding; and whether ITT Continental is a "successor" to Continental and assumed Continental's liabilities under the order (see App. 134a–136a).

Since the district court ruled that the violations were not continuing, it did not rule on the notice issue, but expressed the view that it would seem unreasonable for the Commission knowingly to permit daily penalties to accrue without giving notice of its position (App. C, *infra,* p. 15a).

The court held that it had the power to grant equitable relief (*id.*, at pp. 15a–16a). As noted above (*supra,* n. 1), Congress has since expressly authorized district courts to grant such relief in Section 5(*l*) civil penalty actions.

Finally, the court ruled that ITT Continental is a successor of Continental and that ITT Continental "assumed the liabilities of Continental Baking Company including the liabilities under the Federal Trade Commission consent order" (App. C, *infra,* p. 16a).

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The court imposed the maximum single civil penalty of $5,000 for each of the two "separate" violations it found, and entered an injunction commanding ITT Continental to comply with the terms of the consent order until it expired[6] (App. C, *infra*, p. 16A; App. D, *infra*, p. 17A). It declined, however, to order divestiture of the assets ITT Continental acquired in violation of the order.

Both parties appealed. The court of appeals reversed the district court's ruling that Continental's transactions with the third firm did not constitute an acquisition in violation of the order and remanded the case to the district court for the imposition of an appropriate "single" civil penalty for that violation. It affirmed in all other respects.

In affirming the district court's ruling that the prohibited acquisitions constituted single, rather than continuing, violations of the order, the court of appeals held, citing *United States* v. *Armour & Co.*, 402 U.S. 673, that the scope of a consent decree must be discerned within its "four corners" (*id.* at 682), and that the decree must be construed "as it is written" (*ibid.*). Under this standard, the court of appeals reasoned, the order must be construed as prohibiting only the "act" of acquisition, and not the continued reten-

[6] The consent order was scheduled to expire by its own terms on May 15, 1972, and the district court's injunction ran only until that date.

In April 1972, the Commission issued an order requiring ITT Continental to show cause why the order's ban on acquisitions should not be extended until April 1977. On December 12, 1973, following hearings, the administrative law judge filed an opinion recommending that the ban on acquisitions be extended to April 13, 1977.

tion of assets acquired contrary to its terms (App. A, *infra*, pp. 8A–9A).

REASONS FOR GRANTING THE WRIT

This case presents a question of basic importance to the enforcement of Federal Trade Commission orders barring future acquisitions. Some 66 Commission orders now in force bar acquisitions in language similar to the language of the order in this case. By eliminating the risk that violations of these non-acquisition orders may result in the imposition of substantial civil penalties, the court of appeals' ruling removes the most effective incentive for compliance, and converts the prohibition against futher acquisitions into a minor additional cost of acquisition (with, at the least, an opportunity to divest without further sanction) after the violator is detected, sued and enjoined. This ruling is inconsistent with the purpose of the Wheeler-Lea and Clayton Finality Act Amendments, and the only other court which has considered the same question has ruled to the contrary.[7] Plenary review is therefore warranted.

1. In order to limit trends towards concentration it perceived as resulting or likely to result, from acquisitions in particular industries, the Commission has in recent years included in its orders in appropriate cases provisions barring further acquisitions (usually for a limited period), unless the firm sub-

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[7] In *United States* v. *Beatrice Foods Co.*, 351 F. Supp. 969 (D. Minn.), appeal pending, C.A. 8, No. 73–1120, the district court imposed a civil penalty of $200 per day (for a total penalty of $156,400; *id.* at 971) for an acquisition prohibited by a Commission consent order similar to the order in this case. The non-acquisition provision involved in that case is set forth in the district court's opinion on liability, 344 F. Supp. 104, 107.

ject to the order obtains the Commission's prior approval. These remedial provisions have two broad purposes which supplement the Commission's authority to enforce the antitrust laws: (1) they permit the Commission to withhold approval of particular acquisitions inconsistent with the remedial purposes of the order, even though, if viewed separately, the acquisitions might not themselves violate the antitrust laws;[8] and (2) they eliminate the problems that inhere in divestiture proceedings by affording the Commission an opportunity to assess the competitive effects of a proposed acquisition before it is consummated.

As noted above, there are currently in effect 66 Commission orders which bar future acquisitions, but which, like the order in this case, do not expressly bar the "holding" of stock or assets acquired in violation of their terms (App. E, *infra*, pp. 18A–22A). Fifty-four of these are consent orders of which 27 have at least five more years to run.

If these orders are construed as prohibiting only the "act" of acquisition, but not the "holding" of unlaw-

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[8] As their terms make plain, the Commission's non-acquisition orders do not prohibit absolutely all acquisitions by the firms subject to them. Thus, in *In the Matter of Beatrice Foods Co.*, 67 F.T.C. 473, 731, n. 48, a proceeding which resulted in the entry of a non-acquisition consent order similar to the order in this case, the Commission explained that:

"* * * an order forbidding future acquisitions without prior approval by the Commission is in no sense an absolute ban on such acquisitions. In deciding whether or not to approve a proposed acquisition submitted under such an order, the Commission is not free to act capriciously or unreasonably. It may deny approval only where the acquisition, if consummated, would conflict with the remedial objectives of the order."

fully acquired stock or assets, their efficacy will be greatly diminished, and the remedial purposes for which they were designed will be correspondingly undermined. For the firms subject to these orders would risk only a maximum civil penalty of $10,000 for a "single" violation and possible divestiture for making a prohibited acquisition. Thus, the ruling below, by removing the threat that prohibited acquisitions may result in substantial civil penalties, effectively encourages firms subject to non-acquisition orders to risk a civil penalty action, rather than comply, where potentially profitable acquisitions are involved.[9] The court of appeals' ruling thus threatens seriously to impair the effectiveness of a large number of outstanding orders.

The possibility that a district court may exercise its equitable power to order divestiture in a civil penalty proceeding, a power which Congress made explicit in the recent amendment of the Federal Trade Commission Act (see, *supra,* n. 1), is insufficient to achieve the deterrence attending the threat of substantial monetary penalties for a prohibited acquisition. Events subsequent to an unlawful acquisition sometimes make divestiture impractical and divestiture is often long delayed. But more important, the purpose of Congress in backing Commission orders with substantial monetary penalties was to deter violations by making them very costly. The possibility that a successful civil

[9] The Commission's rules provide that upon request, the Commission will advise a party whether a proposed course of action would comply with an order. 16 C.F.R. 3.61(d). Under the court of appeals decision, however, there would be no incentive to request such a ruling.

penalty action for an unlawful acquisition may result in a nominal penalty together with an order of divestiture is obviously no substitute, in deterrent effect, for the possibility that a prohibited acquisition may cost up to $10,000 per day from the time it is made until the properties are divested.[10] And, as we shall now show, properly construed, the non-acquisition order in this case, and others like it, prohibit not only the "act" of acquisition but also the continued retention of properties acquired in contravention of the order's terms.

2. The only reason for barring an acquisition is to prevent its effects; for competitive purposes there is nothing intrinsically wrong with the "act" of acquisition in and of itself. Thus, it is the anticompetitive effects of certain acquisitions which lead to their proscription under Section 7 of the Clayton Act (15 U.S.C. 18).[11] The anticompetitive effects of acquisitions condemned by Section 7 result from the fact that by holding the stock or assets, the acquiring firm changes the competitive structure of the industry.

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[10] The size of the penalties to be imposed is within the informed discretion of the district court, but may not exceed the statutory maximum. As the district court observed in the *Beatrice Foods* case (see, *supra*, n. 7): "Penalties could range * * * from $5,000 [now $10,000] a day down to zero or $1.00 a day." 322 F. Supp. 139, 141.

[11] Section 7 provides, in part, that:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

It is the permanent or continuing effects of prohibited acquisitions which Congress sought to prevent in the statute, and which the parties similarly sought to prevent in this case by adopting a consent order which, like Section 7, prohibits certain acquisitions for the express purpose of preserving competition. Specifically, the parties here, as we have noted (Statement, *supra,* p. 5), pointed in their agreement to the effects of acquisitions in the bread industry—the trend toward concentration resulting from acquisitions—as a problem which would be eliminated so far as Continental was concerned if the Commission adopted the proposed order (App. 78a). In this context, we submit, it frustrates the basic purpose of the order to conclude, as did the court of appeals, that the term "acquisition" in the order does not embrace the retention of the assets illegally acquired.

Indeed, this Court has held that Section 7 is a ban on the relationship an acquisition creates, rather than merely a ban on the "act" of acquisition. In *United States* v. *du Pont & Co.,* 353 U.S. 586, the Court held that the legality of du Pont's acquisition of General Motors' stock should be determined by assessing its effects at the time the government brought suit (1949) rather than at the time of acquisition (1917–1919). In so holding, the Court expressly rejected the argument that "the Government could not maintain this action in 1949 because § 7 is applicable only to the acquisition of stock and not to the holding or subsequent use of the stock" (353 U.S. at 596–597). It explained that the argument was misconceived because the aim of Section 7 "was primarily to arrest appre-

hended consequences of intercorporate relationships before those relationships could work their evil, which may be at or any time after the acquisition * * *" (*id.* at 597).[12] Significantly, the Court issued its ruling over a strong dissent which argued that the majority had amended Section 7 to prohibit the acquisition and continued holding of stock. The dissent asserted that "[t]he offense described by § 7 is the acquisition, not the holding or the use, of stock. When the acquisition has been made, the offense, if any, is complete" (*id.* at 620). This limited construction of Section 7, which the Court rejected, is identical to the district court's construction of the order in this case ("Once these two acquisitions were accomplished the violations were complete") which the court below endorsed (App. A, *infra,* pp. 8A-9A).

In rejecting the government's contention that the order here, like Section 7, bars the relationship or effects of prohibited acquisitions, rather than merely the "act" of acquisition, the court of appeals relied solely on *United States* v. *Armour & Co.,* 402 U.S. 673. But *Armour* does not support this overly literal construction of the order at issue here. In *Armour* the government claimed that the purpose of the consent decree was to provide a complete structural separation between the defendant meatpackers and retail food firms which would be frustrated by the acquisition of a defendant meatpacker (Armour) by a

[12] As the Second Circuit observed in another context: "what was unlawful was du Pont's status as stockholder in General Motors, and that status continued until divestiture." *Gottesman* v. *General Motors Corp.*, 414 F. 2d 956, 965.

firm engaged in the retail food business (Greyhound). The Court rejected that contention because it found particular provisions in the decree which were inconsistent with such a complete structural separation (see 402 U.S. at 677–680). Having made that determination, the Court responded to the government's argument that Greyhound's acquisition of Armour would frustrate the purposes of the original litigation against the meatpackers. Since it is a bargain between opposing parties, the Court stated, "the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it"; it "must be construed as it is written, and not as it might have been written had the plaintiff established his factual claims and legal theories in litigation" (*id.* at 682).

By contrast, there is nothing in the consent order at issue here which is inconsistent with the construction the government urges. In addition, both the complaint (App. 62a–63a), which the parties agreed could be referred to in construing the order (App. 69a), and the agreement containing the proposed order (App. 78a), speak of acquisitions as increasing the trend toward industry-wide concentration, clearly indicating that it was the effects of acquisitions which the parties sought to prohibit, rather than just the "act" of acquisition.

Moreover, implicit in the court of appeals' reliance on *Armour* is the proposition that the Commission did not have the "bargaining power" (see *Armour, supra,* 402 U.S. at 681) to include in the consent order a sep-

arate ban on "holding" unlawfully acquired assets. Had a separate express ban on "holding" unlawfully acquired properties been included in some prior Commission orders barring future acquisitions, this proposition might have some force. But the technical and artificial distinction between "acquiring" and "holding" is not reflected in any Commission order, whether entered after litigation or by consent. So far as we are aware, no Commission order barring future acquisitions also expressly bars the "holding" of properties acquired in violation of the order.

A ruling that an acquisition prohibited by a Commission order subjects the acquiring firm to sanctions for each day it retains the assets would be consistent with the basic purpose of the civil penalty provisions to "enforce obedience to the Commission's orders to cease and desist." H. Rep. No. 1613, 75th Cong., 1st Sess., p. 4. Under the wording of these provisions, in light of their legislative history, it is clear that failure to comply with an order requiring divestiture is a "continuing failure or neglect to obey" the order, and that "each day of continuance of such failure or neglect shall be deemed a separate offense" (15 U.S.C. 21(*l*), 45(*l*); *i.e.,* failure to comply with a divestiture order subjects a respondent to a maximum civil penalty of $5,000 (now $10,000) per day. The House Report on the bill which in 1959 added the remedial provision to the Clayton Act (15 U.S.C. 21(*l*)), in virtually the same terms as it appeared in the Federal Trade Commission Act (15 U.S.C. 45(*l*)),[13] stated that

[13] The Wheeler-Lea Act of 1938 (52 Stat. 111) amended generally the review and enforcement procedures of the Federal

"unless the maximum penalty applied and each day of a continuing violation considered [sic] a separate offense, an order dissolving an unlawful merger could be ignored after the mere payment of a $5,000 fine." H. Rep. No. 580, 86th Cong., 1st Sess., p. 7. Similarily, unless a prohibited acquisition is likewise deemed a continuing failure to obey the order proscribing it, the order could be effectively ignored, for the firm subject to it would risk only a nominal monetary penalty and the possibility of divestiture for a violation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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FEBRUARY 1974.

Trade Commission Act. Under the 1938 Act, after a cease and desist order becomes final as provided in the statute, a violation of the order subjects the respondent to a civil penalty of not more than $5,000 (now $10,000). The provision declaring each day's non-compliance a separate offense was added to the Trade Commission Act in 1950. 64 Stat. 20. The Clayton Finalty Act of 1959 (73 Stat. 242) amended the review and enforcement procedures for Commission orders issued under the Clayton Act to conform to the parallel provisions of the Trade Commission Act. See *Federal Trade Commission* v. *Jantzen, Inc.*, 386 U.S. 228.

it were the maximum penalty applied and each day of a continuing violation considered [sic] a separate offense, an order dissolving an unlawful merger could be obeyed after the mere payment of a $5,840 fine." [illegible] Ibid. The SEC itself found, [illegible] a prohibited practice [illegible] because the cost of continuing failure to obey the order [illegible] could be [illegible] [illegible]

APPENDIX A

United States Court of Appeals Tenth Circuit
Nos. 72–1072–73–September 1973 Term

UNITED STATES OF AMERICA, APPELLANT

v.

ITT CONTINENTAL BAKING COMPANY, APPELLEE

Appeal From the United States District Court for the District of Colorado (D.C. No. C–1220)

[Filed, September 24, 1973, Howard K. Phillips, Clerk, United States Court of Appeals, Tenth Circuit]

George Edelstein, Attorney, Department of Justice (*Thomas E. Kauper,* Assistant Attorney General, *Howard E. Shapiro,* Attorney, Department of Justice, of Counsel, *Joseph J. Gercke* and *James E. Corkey,* Attorneys, Federal Trade Commission, with him on the Brief), for Appellant.

John H. Schafer, of Covington & Burling, Washington, D.C. (*Robert F. Welborn,* of Welborn, Dufford, Cook, Phipps & Brown, Denver, Colorado, and *Gerald P. Norton,* Washington, D.C., of Counsel, with him on the Brief), for Appellee.

Before SETH, Circuit Judge, LARAMORE, Senior Judge, United States Court of Claims,* and DOYLE, Circuit Judge

SETH, Circuit Judge.

This is an appeal from the judgment of the District Court for the District of Colorado in a suit

*Sitting by Designation.

brought by the United States under the Clayton Act [15 U.S.C. § 21 (*1*)], and the Federal Trade Commission Act [15 U.S.C. § 45(*1*)] against ITT Continental Baking Company. The Government sued to recover civil penalties and for injunctive relief for three asserted violations of a Federal Trade Commission consent cease and desist order relating to the acquisition of bakeries.

The case was tried on a stipulation of facts. The court ruled that two of the three challenged acquisitions were prohibited by the FTC's order, and the third was not. The court ruled also that each prohibited acquisition was a single violation of the order and did not commence a continuing violation. The maximum single penalty of $5,000.00 for each of the two violations was imposed. The court further held that the FTC's order, which had initially been applied to Continental Baking Company was also applicable to ITT Continental Baking Company and that ITT Continental was liable for the penalties. The court did not order ITT Continental to divest itself of the assets acquired in violation of the order, but did order ITT Continental to comply with the terms of the FTC order until that order expired.

The Government appeals from the court's judgment insofar as it held that the third transaction was not an "acquisition" in violation of the FTC order, that each violation was not a continuing one subject to penalties for daily violation, and insofar as the court did not order ITT Continental to divest itself of the three acquisitions. ITT Continental cross-appeals from the judgment, in its entirety, of the district court.

In May 1960, the FTC issued a complaint against Continental Baking Company, charging that Continental's acquisition of several baking companies engaged in the production and sale of bread from 1952

through 1958 violated section 7 of the Clayton Act [15 U.S.C. § 18], and section 5 of the Federal Trade Commission Act [15 U.S.C. § 45]. While the administrative proceedings were still in the hearing stage on this complaint, the parties negotiated a consent cease and desist order. The relevant part of the order provided:

> "It is further ordered that for a period of ten (10) years from the date of issuance of this order by the Federal Trade Commission respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls unless the Commission, on petition for modification of this Section III of this order, permits such an acquisition by respondent, said modification to be within the sole and final discretion of the Federal Trade Commission."

This consent order is the basis for this action, and must be construed as to the nature of several transactions asserted by the Government to be in violation of its provisions, and as to the imposition of penalties if a violation has taken place. This should be done in accordance with the standards laid down in *United States* v. *Armour & Co.*, 402 U.S. 673, and in *Hughes* v. *United States*, 342 U.S. 353. In the *Armour* case the Court said, after mentioning the negotiation and reasons for a consent decree:

> "For these reasons, the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it. * * * the instrument must be construed as it is written, and not as it might have been written had the plaintiff established his factual claims and legal theories in litigation."

The consent order here concerned originated in a situation similar to a consent decree, and the reasons exist for application of the method of construction used in *Armour*. The order here is somewhat different in that it expressly permits or suggests reference to the complaint as an aid in construction. The result reached by the trial court in construing the order is not too restrictive nor unreasonable. It is one which may be arrived at by reference to the complaint, and by use of the method indicated in the *Armour* case. We will follow such a construction under these circumstances.

To consider the consent order "within its four corners," the wording is directed to the acquisition of businesses engaged in bread making, directly or indirectly. The only reference in the order is to the "acquiring" of such businesses. The complaint refers to the acquisition of bakeries as a course of conduct by Continental Bakeries. The order prohibits acquisition for a ten-year period. It is apparent from the record that it is upon the event of acquisition by the defendant that the local bakery is out of the bread making business. The acquisition itself, and not the *method* of operation thereafter, is the critical factor, and this is the event or incident to which the complaint and the order were directed.

This consideration of the order leads us to agree with the trial court as to whether the violations found were continuing or not, and also to agree as to the two particular acquisitions found by the trial court to be violations of the order.

As to the violations the record shows that in 1965 Continental and Bon Ton, Inc., of Missoula, Montana, entered into a sales agreement. Bon Ton, Inc. was engaged in the production of bakery products, including bread. These were sold at wholesale over thirteen routes in western Montana. Under the agreement, Bon

Ton became an exclusive distributor of bread produced by Continental. Also, in the language of the parties' stipulation of fact, the "* * * understanding was that Bon Ton would cease production of bread * * * before it became a distributor of Continental's bread." On July 10, 1965, Bon Ton stopped producing bread and on the following Monday, began to distribute bread produced by Continental over the same routes and to the same customers as theretofore. On July 12, 1965, Bon Ton's president and owner of the vast majority of its stock deposited in the Bon Ton bakery account a Continental check drawn in his favor in the amount of $37,500.00. ITT Continental has described this amount as a "loan" to enable Bon Ton to meet Continental's credit requirements. However, Bon Ton gave to Continental an option to purchase the distributorship for the same amount. Continental acquired Bon Ton's accounts receivable, route books, customer lists, trademarks, trucks, and all but approximately $1,800.00 of its bank account. At this time, Bon Ton's "president" and its drivers became employees, on a salaried basis, of Continental. In consideration of the transfer Continental cancelled all outstanding invoices for products sold to Bon Ton and also cancelled the $37,500.00 "loan."

In April 1966 Continental and the Wyoming Baking Company entered into a "sales agreement," which was, in all relevant aspects, the same as the agreement entered into between Continental and Bon Ton. The same "understanding" existed as to Wyoming Baking's discontinuance of its own production of bread. In accordance with this "understanding," Wyoming Baking had ceased its own production of bread and began distributing Continental's products over the same routes and to the same customers. The sales agreement also provided that Continental would have

an option to purchase the distributorship under certain circumstances. Some disagreement arose and the distributorship was sold, through the assistance of Continental, to another distributor from Idaho. This new ownership lasted about a year, at which time Continental itself acquired the ownership for a cancellation of its debts and $15,000.00.

What is herein considered the third incident concerned the Sheppard Baking Company. This arrangement was *not* considered by the trial court to be a violation of the order while the above two were held to be in violation.

In August 1966 Continental and Sheppard Baking Company, of Durango, Colorado, entered into a "sales agreement" which was, in all relevant aspects, virtually identical to the agreements entered into between Continental, and Bon Ton and Wyoming Baking. Prior to this time Sheppard Baking had been engaged in the production and sale of bakery products, including bread and bread-type rolls, which were sold over routes in southwestern Colorado. As with Bon Ton and Wyoming Baking, the "understanding" between Continental and Sheppard Baking was that Sheppard would cease production of bread upon becoming a Continental distributor. In mid-October 1966, Sheppard stopped producing its own bread and began distributing that of Continental over the same routes, to the same customers, and in substantially the same quantities as it had formerly sold and distributed similar products produced at its own plant prior to that date. However, unlike the transactions concerning Bon Ton and Wyoming Baking, the sales agreement between Continental and Sheppard Baking did not involve any "loan," nor option agreement, nor an outright payment. The following specific covenant appears in the "sales agreement" between Continental and Sheppard Baking:

Dealer covenants and agrees as follows:

* * * * *

> "To keep and maintain route books containing the name, address, and weekly purchases of each account in Dealer's territory. These route books shall be deemed an asset of the dealership and shall be transferred with the dealership in accordance with the provisions of this agreement."

The same provision, in exactly the same language, also appears in the sales agreements that Continental entered into with Bon Ton and Wyoming Baking, respectively.

Under these circumstances, we must hold that all three agreements accomplished the same purpose, which was to acquire indirectly such an interest or control in the business or the assets of the local baker so as to have him cease production. As to Sheppard Baking Company, there was no cash paid, and the dealership as such was not purchased, but the consideration for the exclusive arrangement was sufficient, and was effective to induce the owner to close the local bakery. This was an indirect acquisition prohibited by the order and a "payment" of money was not necessary to constitute a violation. The market and the volume was so acquired, and this was a principal asset of the bakery. There was a violation of the order in the arrangement with Sheppard Baking Company. See *United States* v. *Columbia Pictures Corp.*, 189 F. Supp. 153 (S.D.N.Y. 1960).

The trial court found that ITT Continental Baking Company "* * * is a successor of Continental Baking Company and that it assumed the liabilities of Continental Baking Company including the liabilities under the Federal Trade Commission consent order." ITT Continental concedes that it is liable for any violations of the FTC order that Continental incurred *prior* to

the date of the merger between ITT and Continental, and the violations here concerned were such. *Regal Knitwear Co.* v. *NLRB,* 324 U.S. 9, is sufficient authority for this position under the facts before us.

As to the issue of a continuing violation for penalty purposes, the trial court found that the terms of the consent order "proscribe only the act of acquisition and that the violations of the consent order found as to Bon Ton and Wyoming Baking did not constitute a 'continuing failure or neglect to obey' said order. Accordingly the government's demand for imposition of daily penalties under 15 U.S.C. §§ 21(*1*) and 45(*1*) is denied. Once these two acquisitions were accomplished, the violations were complete."

Counsel for both parties have cited no cases directly in point, nor has our own independent research disclosed any such cases, dealing with what constitutes a "continuing failure or neglect to obey" a consent order of the type here in question for the purposes of imposing daily penalties for violation. 15 U.S.C. §§ 21 (*1*), 45(*1*).

ITT Continental argues that the FTC order in this case does not proscribe the "holding of assets," but merely the acquisition thereof, and therefore there can be no continuing failure to obey the order by virtue of ITT Continental's holding of the dealership assets once they were initially acquired.

The Government, on the other hand, asserts that because a ban on acquisitions has been construed as a ban on the relationship such acquisitions create, see *United States* v. *du Pont & Co.,* 353 U.S. 586 (1957), *Gottesman* v. *General Motors Corp.,* 414 F. 2d 956 (2d Cir.), the parties in this case intended to prohibit, by the consent order, the relationship created by such acquisitions in the same or similar manner that section 7 of the Clayton Act, 15 U.S.C. § 18,

prohibits such relationship or effects. See *United States* v. *du Pont & Co.,* 353 U.S. 586 (1957).

As we have recognized above, the scope of a consent decree must be discerned within its "four corners," *United States* v. *Armour & Co.,* 402 U.S. 673, and must be construed "as it is written."

The "consequences" argument is significant as to penalties to be assessed for violation of the order; that is, whether the order was directed to the acquisition or to the acquisition and retention of assets or interests. We have indicated above that we agree with the determination of this issue by the trial court. This was an interpretation of the consent order, and the result is in accordance with the prevailing standards. This court has determined that the three acquisitions were in violation of the order. The imposition of the penalties does not insulate the consequences of the acquisition from further proceedings which remain available to the Government. The defendant has taken the position that the order did not extend to the holding of assets acquired contrary to the order, or to the consequences thereof. The trial court so held and we have affirmed on this point. Thus the consequences of holding have been held to be outside the order, and outside the penalties, and outside of this action.

Divestiture as a remedy was advocated and advanced by the Government, but the trial court did not include it in its order. The extent of the penalties is within the discretion of the trial court. The trial court had jurisdiction to order divestiture or equitable remedies generally.

The case is remanded only for the imposition of a penalty by the trial court for the violation of the order in the Sheppard Baking Company acquisition as a single violation, in whatever amount the court

sees fit within the statutory limits. Otherwise, the case is affirmed.

DOYLE, Circuit Judge, concurring.

While I concur in the court's opinion, it is with reluctance that I approve of the remedy which has been imposed. Considering the frequency and magnitude of defendant-appellant's transgressions in this case, the mere imposition of a fine falls far short of a satisfactory outcome. Ordinarily a divestiture of the wrongfully acquired businesses would be the proper remedy, both to fulfill the objective of the antitrust laws, and to deter the defendant-appellant and other similarly-situated entities from committing such abuses in the future. *Ford Motor Co.* v. *United States,* 405 U.S. 562, 573 (1972); *United States* v. *El Paso Natural Gas Co.,* 376 U.S. 651 (1964); *United States* v. *E. I. Du Pont De Nemours & Co.,* 366 U.S. 316, 328–35 (1961); *Schine Chain Theatres* v. *United States,* 334 U.S. 110, 128 (1948); *United States* v. *Crescent Amusement Co.,* 323 U.S. 173, 189 (1944); *United States* v. *Beatrice Foods Co.,* 351 F. Supp. 969 (D. Minn. 1972). However, I have concluded that because of deficiences in the consent decree and other factual characteristics of this case, the result reached, while weak, is within the range of remedies the trial court may impose. On this basis I agree with the result.

APPENDIX B

September Term—September 24, 1973

Nos. 72–1072 and 72–1073 (Cross-Appeal)

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

ITT CONTINENTAL BAKING COMPANY, DEFENDANT-APPELLEE

Before Hon. OLIVER SETH, Circuit Judge, Hon. DON N. LARAMORE, Senior Judge, Court of Claims, and Hon. WILLIAM E. DOYLE, Circuit Judge

These causes came on to be heard on the record on appeal from the United States District Court for the District of Colorado, and was argued by counsel.

On consideration whereof, it is ordered that the cases are remanded only for the imposition of a penalty by the United States District Court for the violation of the order in the Sheppard Baking Company acquisition as a single violation, in whatever amount the United States District Court sees fit within the statutory limits. Otherwise, the cases are affirmed. Doyle, Circuit Judge, concurring.

A true copy.

Test.

HOWARD K. PHILLIPS,
Clerk.

By LAVON M. IRLBECK,
Deputy Clerk.

APPENDIX C

In the United States District Court for the District of Colorado

Civil Action No. C–1220

UNITED STATES OF AMERICA, PLAINTIFF

vs.

ITT CONTINENTAL BAKING COMPANY, DEFENDANT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case involves a complaint filed by the United States against ITT Continental Baking Company, for alleged violations of a final consent order of the Federal Trade Commission. The plaintiff seeks civil penalties and equitable relief.

The case has been submitted by the parties for decision by the Court upon the basis of a stipulation of facts incorporating various exhibits attached thereto and a supplemental stipulation. These stipulations the Court incorporates by reference as part of its findings. Excellent briefs and oral arguments were presented, and based upon these stipulations, briefs and arguments, the Court makes the following additional findings of fact and conclusions of law:

1. The most important issues presented are (1) whether certain arrangements and transactions between Continental Baking Company ("Continental") and three separate companies violated the terms of Section III of the consent order of the Federal Trade Commission in FTC Docket No. 7880, which order issued on May 15, 1962, and became final on July 14, 1962; and (2) whether such arrangements and trans-

actions constitute continuing violations in the sense that a separate penalty should be assessed for each day after each violation occurred.

The commission order provides in material part:

> That for a period of ten (10) years from the date of issuance of this order by the Federal Trade Commission respondent [Continental Baking Company] shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or non-corporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls unless the Commission, on petition for modification of this Section III of this order, permits such an acquisition by respondent, said modification to be within the sole and final discretion of the Federal Trade Commission.

Other issues presented are (a) successorship as involving ITT Continental Baking Co., (b) the obligation of the Federal Trade Commission to provide notice of violation of its order to defendant, and (c) the Court's authority to grant injunctive and other equitable relief in a civil penalty proceeding brought by the United States on behalf of the Federal Trade Commission.

2. The jurisdiction of the Court is admitted and is found. *See,* 15 U.S.C. § 49; 29 U.S.C. §§ 1337, 1345, 1355, 1395.

3. The basic issues depend not upon questions of statutory construction, but upon an interpretation, in the light of the facts, of the consent order, which, as a negotiated order, is almost in the nature of a contract. In an action to enforce a penalty such a consent order should be strictly construed according to its terms, and, all ambiguities or uncertainties should be resolved against the imposition of a penalty.

4. I find that, particularly in businesses where route salesmen are involved, customer lists have a peculiar value, and that they frequently represent the principal asset of a business. I find that here, with reference to Bon Ton, [Count I] there was an acquisition, directly or indirectly, of assets. The way the contract was structured from its outset, although it was not carried through exactly in accordance with its original structuring, there was an intent to acquire assets, and these assets, the most important of which were sales routes and sales volume, were acquired.

5. Without going into detail, I make a similar finding as to the acquisition of Wyoming Baking Co., at Casper, Wyoming [Count II]. I find that with reference to Wyoming Baking there was, in fact, an acquisition of certain of the assets, more particularly the sales routes and sales volume, and I find that there was an intent to acquire those assets. I further find that although the meaning of the consent order was to prohibit these acquisitions, competent counsel could reasonably read it as not prohibiting Continental's agreements with Bon Ton and Wyoming Baking. This finding is made in connection with the exercise of the Court's discretion in fixing the amount of the penalty to be assessed.

6. With respect to Count III, relating to Sheppard Baking Co. at Durango, Colorado, I find that there was no acquisition, directly or indirectly of any assets. While both parties have asserted that all these transactions are basically the same and have no legally distinguishing features, I disagree. I find that the Sheppard-Durango situation differs from the other two in that there was no consideration whatsoever paid to Mr. Sheppard. Sheppard-Durango was a failing business, and the defendant did not, in the Sheppard-Durango situation, acquire the route lists or the customer lists or acquire access to such lists as it did in

the instances of Bon Ton and Wyoming Baking. Therefore, I find that the Sheppard-Durango transaction differs from the Bon Ton and Wyoming Baking transactions and that it does not violate the consent order.

7. The Court further finds that the terms of the consent order proscribe only the act of acquisition and that the violations of the consent order found as to Bon Ton and Wyoming Baking did not constitute a "continuing failure or neglect to obey" said order. Accordingly the government's demand for imposition of daily penalties under 15 U.S.C. §§ 21(*1*) and 45(*1*) is denied. Once these two acquisitions were accomplished, the violations were complete.

8. I find that there was no obligation whatsoever on the Federal Trade Commission to give notice of its intent to certify a civil penalty case to the Attorney General. Had the Court concluded that the violations were continuing in nature, a determination of the question of whether or not reasonable notice should been given would be required. In light of the Court's finding in paragraph 7 hereof, this question need not be resolved, but, as obiter dictum, it would seem unreasonable to permit the commission to knowingly let daily penalties accrue without giving notice of the commission's position at the earliest reasonable time.

9. The Court finds that it is empowered to grant injunctive relief in a civil penalty proceeding brought by the Attorney General with respect to a Federal Trade Commission order. The Court's attention has been directed to *Herbold Lab., Inc.* v. *United States*, 413 F. 2d 343 (9th Cir. 1969), where the Court of Appeals found no such authority to exist. However, this Court respectfully declines to follow this authority, believing that Congress, in the statutory scheme underlying this action, did not intend to

deprive the district courts of their general equity powers. I find authority to issue an injunction and hereby conclude that an injunction should issue in the exact words of the Commission's order commanding defendant's future compliance therewith. The Court declines to grant the plaintiff's request for broader equitable relief.

10. The Commission's original proceeding and consent order involved Continental Baking Company, which ceased to exist on September 13, 1968, by virtue of its merger into ITT Continental Baking Company ("ITT Continental"), the defendant herein. I find that ITT Continental Baking Company is a successor of Continental Baking Company and that it assumed the liabilities of Continental Baking Company including the liabilities under the Federal Trade Commission consent order. No issue was raised by defendant as to its liability for monetary penalties for any violation by Continental.

11. In view of the foregoing the Court finds that penalties of $5,000, should be imposed upon defendant on both Count I and II, for a total of Ten Thousand Dollars ($10,000). and that an injunction should enter against defendant in the terms of the Commission's consent order against Continental, said injunction to expire on May 15, 1972.

Dated at Denver, Colorado, this 2d day of August, 1971.

Fred M. Winner,
United States District Judge.

APPENDIX D

In the United States District Court for the District of Colorado

Civil No. C–1220

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ITT CONTINENTAL BAKING COMPANY, DEFENDANT

FINAL JUDGMENT AND ORDER

Upon the Court's Findings of Fact and Conclusions of Law entered in this case.

It is Adjudged and Decreed That:

1. Judgment is entered for plaintiff in the amount of $5,000 as to both Counts I and II of the Amended Complaint for a total of $10,000.

2. Judgment is entered for defendant on Count III of the Amended Complaint.

3. From the date of entry of this Final Judgment and Order until May 15, 1972, defendant is ordered to cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, or assets of any concern, corporate or noncorporate, engaged in any state of the United States in the production and sale of bread and bread-type rolls, unless the Federal Trade Commission, on petition for modification of Section III of its order issued against Continental Baking Company (FTC Docket No. 7880), permits such an acquisition by defendant, said modification to be within the sole and final discretion of the Federal Trade Commission.

FRED M. WINNER,
U.S. District Judge.

Dated: AUGUST 2, 1971.

APPENDIX E

Commission Orders Containing Non-Acquisition Provisions As Of February 1, 1974*

Respondent Docket No.	Industry involved	Year of expiration	Litigated/consent
1. ABC Consolidated Corp., Docket No. 7652.	Motion picture theatre concessions.	1974	Consent.
2. American Brake Shoe Co., Docket No. 8622.	Sintered metal friction material.	1980	Litigated.
3. Allied Chemical Corp., Docket No. 8767.	Automotive yarn, webbing or belts.	1981	Litigated.
4. Allied Stores Corp., Docket No. C-1001.	Department or GMAF stores.	1975	Consent.
5. Amerada Hess Corp., Docket No. C-2456.	Asphalt refining; crude oil refining.	1983; perpetual	Consent.
6. American Bakeries, Docket No. C-1111.	Bakery companies.	1976	Consent.
7. American Cyanamid Co., Docket No. C-2381.	Toilet preparations.	1983	Consent.
8. ARA Services, Inc., Docket No. C-2360.	Periodical and paperback book wholesalers.	1983	Consent.
9. ARA Services, Inc., Docket No. C-2400.	Vending machine operations.	1983	Consent.
10. Beatrice Foods Co., Docket No. 6653.	Dairy companies.	1977	Consent.
11. H. C. Bohack, Docket No. C-1411.	Grocery stores.	1978	Consent.
12. Bordon Company, Docket No. 6652.	Dairy companies.	1974	Consent.

*Some orders were entered against more than one respondent, and some orders contain more than one non-acquisition provision.

Respondent Docket No.	Industry involved	Year of expiration	Litigated/ consent
13. Broadway-Hale Stores, Inc., Docket No. C-1057.	Department or GMAF stores.	1974	Consent.
14. Burlington Industries, Inc., Docket No. C-1473.	Textile mill products.	1979	Consent.
15. Campbell Taggart Associated Bakeries, Inc., Docket No. 7938.	Bakery companies.	1977	Consent.
16. Chemetron Corp., Docket No. C-1567.	Arc welding business.	1979	Consent.
17. Cole National Corp., Docket No. 8701.	Key manufacturing.	1977	Consent.
18. Consolidated Foods Corp., Docket No. C-1024.	Grocery stores; Dairy product stores.	Perpetual	Consent.
19. Continental Oil Company, Docket No. C-1270.	Vinyl chloride monomer.	1977	Consent.
20. Dean Foods Company, Docket No. 8674.	Dairy companies.	1977	Consent.
21. Ekco Products Co., Docket No. 8122.	Commercial meat handling equipment.	1985	Litigated.
22. Endicott-Johnson Corp., Docket No. C-1009.	Shoes; footwear.	1985	Consent.
23. EZ Painter Corporation, Docket No. C-2106.	Manually powered paint applicators.	1982	Consent.
24. Foremost Dairies, Docket No. 6495.	Dairy companies.	1975	Consent.
25. Foremost Dairies, Inc., Docket No. C-1161.	Pharmaceutical preparations; drugs; druggists' sundries.	Perpetual	Consent.
26. Frito-Lay, Inc., PepsiCo Inc., Docket No. 8606.	Carbonated soft drinks; Snack food products.	1978	Consent.
27. Fruehauf Corp., Docket No. 6608.	Truck trailers.	1976	Consent.
28. The Gates Rubber Co., Docket No. C-2137.	Rubber belts and belting; Rubber hose and hosing.	1983	Consent.

Respondent Docket No.	Industry involved	Year of expiration	Litigated/ consent
29. General Mills, Inc., Docket No. C-1501.	Snack food products.	1979	Consent.
30. Georgia-Pacific Corp., Docket No. 8843.	Timberland; softwood.	1977; 1982	Consent.
31. Georgia-Pacific Corp., Docket No. C-751.	Coarse paper products or converters.	1974	Consent.
32. Golden Grain Macaroni Co., Docket No. 8737.	Dry paste products.	1983	Litigated.
33. W. R. Grace, Docket No. C-1182.	Chocolate and cocoa products.	1977	Consent.
34. Grand Union Company, Docket No. C-1350.	Grocery stores.	1978	Consent.
35. Hercules-Columbian Rope, Docket No. C-1794.	Rope.	Perpetual	Consent.
36. Illinois Central Industries Inc., Midas-International Corp., Docket No. C-2370.	Automotive brake shoes; disc brake pads, brake parts or flashers.	1978; 1983	Consent.
37. Imperial Chemical Industries, Ltd., Docket No. C-2175.	Commercial explosives.	1982	Consent.
38. Koppers Company, Inc., Docket No. 8755.	Resorcinol.	1981	Consent.
39. Korvette-Spartans, Docket No. C-1106.	Department or GMAF stores.	1976	Consent.
40. Kroger/Federated, Docket No. C-2067.	Retail food stores.	1981	Consent.
41. L. G. Balfour Co., et al., Docket No. 843.	Fraternity products.	1981	Litigated.
42. Lehigh Portland Cement Co., Docket No. 8680.	Ready-mixed concrete; concrete products.	1982	Consent.

Respondent Docket No.	Industry involved	Year of expiration	Litigated/consent
43. Maremont Corporation, Docket No. 8763.	Automotive replacement parts, accessories, and equipment.	1981	Consent.
44. Marquette Cement Mfg. Co., Docket No. 8685.	Ready-mixed concrete; concrete products.	1979	Litigated.
45. May Department Stores, Docket No. C-1105.	Department or GMAF stores.	1976	Consent.
46. Mead Corporation, Docket No. C-880.	Containerboard; corrugated products.	1975	Consent.
47. Mississippi River Fuel, Docket No. 8657.	Ready-mixed concrete; concrete products.	1982	Litigated.
48. Missouri Portland Cement Company, Docket No. 8783.	Ready-mixed concrete; concrete products.	1983	Consent.
49. National Tea Company, Docket No. 7453.	Grocery stores.	1976	Litigated.
50. Occidental/Hooker, Docket No. C-1749.	Metal finishing products.	1980	Consent.
51. OKC Corp., Docket No. 8802.	Ready-mixed concrete; concrete products.	1982	Litigated
52. The Papercraft Corporation, Docket No. 8779.	Gift wrap products.	1983	Litigated.
53. Phillips Petroleum Co. et al., Docket No. C-1088.	Polypropylene; Low density polyethylene.	1976; 1986	Consent.
54. Procter & Gamble Company, Docket No. C-1169.	Household consumer products; coffee.	1974; 1977	Consent.
55. Rexall Drug and Chemical Company, Docket No. C-1252.	Glass and plastic containers.	1977	Consent.
56. St. Regis Paper Co., Docket No. C-917.	Linerboard, corrugating medium.	1975	Consent.
57. Scott Paper Co., Docket No. 6559.	Sanitary paper products.	Perpetual	Consent.

Respondent Docket No.	Industry involved	Year of expiration	Litigated/ consent
58. Seeburg Docket No. 8682.	Vending machines.	1980	Litigated.
59. Standard-Amoco, Docket No. C-1371.	Polypropylene; Polypropylene film.	1978	Consent.
60. The Stanley Works, Docket No. 8760.	Cabinet hardware products.	1983	Litigated.
61. Swingline, Inc., Docket No. 8759.	Industrial pneumatic nailers and staplers.	1979	Consent.
62. Textron, Inc., Docket No. C-1740.	Bearings.	1981	Consent.
63. Union Bag-Camp Paper, Docket No 7946.	Coarse paper; container-board; special food board.	1975	Consent.
64. United Industrial Syndicate, Inc., Docket No. C-1860.	Automotive fuel pumps.	1982	Consent.
65. Vulcan Materials, Docket No. C-1409.	Construction aggregates; ready-mixed concerete.	1978	Consent.
66. Winn-Dixie Stores, Inc., Docket No. C-1110.	Retail food stores.	1978	Consent.

U.S. GOVERNMENT PRINTING OFFICE: 1974